

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ANDREAS PEFANIS, on behalf of himself and  
others similarly situated,

Plaintiff,

08 CV 002 (DC) (DFE)

- v. -

**ANSWER**

WESTWAY DINER, INC.,

Defendant.

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1. Defendant WESTWAY DINER, INC. (hereinafter, "Westway"), by its attorneys, MITCHELL & INCANTALUPO, as and for its answer to the complaint of the plaintiff, alleges and states:

**JURISDICTION AND VENUE**

2. Deny the allegations set forth in paragraph "2" of the Complaint, except admit that the jurisdiction of this court is purportedly invoked as set forth therein.

3. Deny the allegations set forth in paragraph "3" of the Complaint, except admit that the venue of this court is purportedly invoked as set forth therein.

**PARTIES**

4. Admit the allegations set forth in paragraph "4" of the Complaint.

5. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph "5" of the Complaint, except admit that plaintiff was employed by defendant as a server until November 2007.

**FLSA COLLECTIVE ALLEGATIONS**

6. Deny the allegations set forth in paragraph "6" of the Complaint, except admit that plaintiff purports to proceed against defendant as set forth therein.

7. Deny the allegations set forth in paragraph "7" of the Complaint.

8. Deny the allegations set forth in paragraph “8” of the Complaint, and respectfully refer all questions of statutory construction to the court for determination.

**RULE 23 – NEW YORK**

9. Deny the allegations set forth in paragraph “9” of the Complaint, except admit that plaintiff purports to proceed against defendant as set forth therein.

10. Deny the allegations set forth in paragraph “10” of the Complaint.

11. Deny the allegations set forth in paragraph “11” of the Complaint.

12. Deny the allegations set forth in paragraph “12” of the Complaint.

13. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph “13” of the Complaint, and leave plaintiff to his proof thereof.

14. Deny the allegations set forth in paragraph “14” of the Complaint.

15. Deny the allegations set forth in paragraph “15” of the Complaint assert a statement of fact the truth of which defendant can admit or deny.

16. Deny the allegations set forth in paragraph “16” of the Complaint assert a statement of fact the truth of which defendant can admit or deny.

**FACTS**

17. Deny the allegations set forth in paragraph “17” of the Complaint.

18. Deny the allegations set forth in paragraph “18” of the Complaint

19. Deny the allegations set forth in paragraph “19” of the Complaint.

20. Deny the allegations set forth in paragraph “20” of the Complaint, except admit that plaintiff worked for defendant at 614 9<sup>th</sup> Avenue, New York, New York, 10036 until November 2007.

21. Deny the allegations set forth in paragraph “21” of the Complaint.

22. Deny the allegations set forth paragraph “22” of the Complaint.

23. Deny the allegations asserted in paragraph "23" of the Complaint and respectfully refer all questions of statutory construction to the Court for determination.

24. Deny the allegations asserted in paragraph "24" of the Complaint and respectfully refer all questions of statutory construction to the Court for determination.

25. Deny the allegations set forth in paragraph "25" of the Complaint except admit that plaintiff was not paid for time he did not work.

26. Deny the allegations set forth in paragraph "26" of the Complaint.

27. Deny the allegations set forth in paragraph "27" of the Complaint and respectfully refer all questions of statutory construction to the Court for determination.

28. Deny the allegations set forth in paragraph "28" of the Complaint.

#### **FIRST CLAIM FOR RELIEF**

29. Defendant reiterates and realleges each and every answer contained in paragraph "1" through "28".

30. Deny the allegations set forth in paragraph "30" of the Complaint, and respectfully refer all questions of statutory construction to the Court for determination.

31. Deny the allegations set forth in paragraph "31" of the Complaint.

32. Deny the allegations set forth in paragraph "32" of the Complaint.

33. Deny the allegations set forth in paragraph "33" of the Complaint.

34. Deny the allegations set forth in paragraph "34" of the Complaint, except admit that plaintiff purports to proceed as stated therein.

#### **SECOND CLAIM FOR RELIEF**

35. Defendant reiterates and realleges each and every answer contained in paragraph "1" through "34".

36. Deny the allegations set forth in paragraph "36" of the Complaint.

37. Deny the allegations set forth in paragraph "37" of the Complaint.

38. Deny the allegations set forth in paragraph "38" of the Complaint.

39. Deny the allegations set forth in paragraph "39" of the Complaint, except admit that plaintiff purports to proceed as stated therein.

**THIRD CLAIM FOR RELIEF**

40. Defendant repeats, reiterates and realleges each and every answer contained in paragraphs "1" through "39" as if more fully set forth at length herein.

41. Deny the allegations set forth in paragraph "41" of the Complaint.

42. Deny the allegations set forth in paragraph "42" of the Complaint.

43. Deny the allegations set forth in paragraph "43" of the Complaint assert a statement of fact the truth of which defendant can admit or deny.

**FOURTH CLAIM FOR RELIEF**

44. Defendant repeats, reiterates and realleges each and every answer contained in paragraphs "1" through "43" as if more fully set forth at length herein.

45. Deny the allegations set forth in paragraph "45" of the Complaint assert a statement of fact the truth of which defendant can admit or deny.

46. Deny the allegations set forth in paragraph "46" of the Complaint.

47. Deny the allegations set forth in paragraph "47" of the Complaint.

48. Deny the allegations set forth in paragraph "48" of the Complaint assert a statement of fact the truth of which defendant can admit or deny.

**FIFTH CLAIM FOR RELIEF**

49. Defendant repeats, reiterates and realleges each and every answer contained in paragraphs "1" through "48" as if more fully set forth at length herein.

50. Deny the allegations set forth in paragraph "50" of the Complaint.

51. Deny the allegations set forth in paragraph "51" of the Complaint.

52. Deny the allegations set forth in paragraph "52" of the Complaint.

53. Deny the allegations set forth in paragraph "53" of the Complaint assert a statement of fact which defendant need admit or deny.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

54. The Complaint fails to state a claim, in whole or in part, upon which relief may be granted.

**WHEREFORE**, defendant requests judgment dismissing the Complaint and denying all relief requested therein, together with the costs of defending this action, including reasonable attorney fees.

Dated: February 4, 2008  
Forest Hills, New York

MITCHELL &amp; INCANTALUPO

By: /s/  
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